

READY FOR SEWER

That on Lower Kansas Avenue May Be Built Now.

Engineer Thinks It Could Be Completed This Season.

VERY MUCH NEEDED.

Drainage of the District is Very Bad Indeed.

Talk of City Damage Suits as a Result.

In all probability the proposed 6-foot brick sewer from the foot of Jackson street to the river will be built this fall, under the city engineer's estimate of \$2,470 for the job.

It seems likely that if the sewer is not built at once, the following will be the result:

"Made land" off the city park worth hundreds of dollars will be washed into the river.

The big wholesale houses will refuse to carry out their present plans to build on lower Kansas avenue.

Heavy damage suits may be brought against the city for flooded basements.

Increased cost in building the sewer next spring when the river is high.

Nearly all of yesterday afternoon was spent by the council committee on sewers inspecting the proposed location for the sewer, and talking with business men in the vicinity to ascertain the exact needs. The result of the conference will be a favorable report to the council on the evening of Nov. 13.

The committee is composed of Councilmen Warner, Weber and Griley.

The committee ascertained that upon the construction of the sewer, the city in large measure the construction of two \$20,000 wholesale houses on lower Kansas avenue next spring. If the sewer is not built, the proposed wholesale house sale and glass house and the Whitaker wholesale commission house may be afraid to carry out their present intentions of building.

A member of the Parkhurst-Davis grocery firm told the committee that the city was likely to suffer from heavy damages in case the basement of that building should be again flooded as it was once during the past season.

A petition for the sewer is being circulated in the blocks adjoining the location of the proposed sewer, asking for the creation of a benefit district. This petition will come up at the next council meeting.

The proposed district extends from Kansas avenue to Van Buren, and First street to the river.

The proposed line for the sewer is from the northwest corner of First and Kansas avenue westward to the alley between Kansas and Jackson streets.

The sewer will run through the city park north along the alley to Crane street, west on Crane to Jackson, and thence directly through the city park to the river. The sewer will be built in the city park.

It is all the city has to pay for. The rest will be built by the residents in the benefit district.

If the sewer is not built the city park is in danger. City Engineer McCabe says: "If we allow the water to flow through the city park, it will wash away the city park, and the city will be forced to pay for the damage done to the city park."

It has cost the city hundreds of dollars to fill in the city park, and it is now being washed away. It is a great deal of money.

An inspection of the proposed site of the sewer in the city park shows that already the ravine of which Mr. McCabe speaks has washed out a hole big enough to hide a house in, at the place where it reaches the river. The dirt is soft, and huge piles of dirt are being slipping off into the water. If the river should rise, it is easy to see how the whole work of the past two years in filling in the city park could be undone in a few days.

"Now is the time to build the sewer," says City Engineer McCabe. "If we wait until the city park is washed away, it will cost the city a great deal of money to build the sewer."

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SAVINGS BANK CASE.

Stockholders Were Not Relieved From Liability.

A mistake was made in the report of Judge Hazen's decision in the Topeka Savings bank case and the stockholders, according to the court's ruling, are liable for their subscriptions. David Overmyer has made the following explanation of the decision on the motions: Some time ago the Topeka Savings bank which went out of business eight years ago instituted actions against several of the stockholders for their unpaid subscriptions to stock. To this the stockholders set up seven distinct defenses. The first defense in each case being a general denial need not be noticed as that might be made in any case.

The second pleaded the three year statute of limitations, but the court held that as this action was upon a contract the three years' statute had no application, the plaintiff having five years in which to bring an action from the time the cause of action accrued. This became the important question, the plaintiff bank contending that the cause of action did not and could not accrue until the terms of the contract until a call was made upon the stockholder, the defendants maintaining that the cause of action accrued at the time the stock was issued. The court held that the bank might have made a call earlier than it did, that it was its duty to make the call when it might have made it, and that consequently the statute of limitations would run from the date at which the call might have been made, which was alleged to have been the first day of December, 1898.

The court, however, held that the bank was not obliged to make the call simply because it might have made it; that the question of time and the propriety of the call was for the bank to decide, and that as the bank could not maintain an action upon the subscription until it made the call, therefore, no cause of action accrued until the call was made, and the statute of limitations could not begin to run until a cause of action accrued.

The fourth defense set up by the defendants was upon the ground that the general banking act of 1891 by its terms made all of the unpaid subscriptions of the Savings bank due. The bank, however, contended that the act of 1891 was not applicable to that it should be construed as applying to the Savings bank it would be unconstitutional as impairing the obligation of the contract. The court held that the act of 1891 had no application to Savings bank previously organized.

The fifth defense set up by the defendants was upon the ground that as the Savings bank had ceased to do business in March, 1898, that it then became the duty of the bank to call for all unpaid subscriptions. The bank, however, contended that as no action accrued until the call was actually made, the statute of limitations could not apply, and the mere fact of the bank ceasing to do business could not have any effect whatever upon the right of the bank to make the call at its own discretion, and this contention was sustained by the court.

The sixth defense questioned the capacity of the bank to bring an action, it being no longer a going concern, but as the court said, this was not a defense, and was easily disposed of as the statutes of Kansas make ample provision for such cases.

The seventh defense set up the fact that the bank was no longer a going concern, that it had gone into voluntary liquidation on the 2nd of March, 1898; that it had no assets of its own, and that but for such injudicious use of its assets its bills could have been paid, and that there would be no occasion for a call upon the stockholders, and that therefore and for these reasons the stockholders were not liable to pay when the bank closed its doors as a business institution, and that calls could not thereafter be lawfully made.

Again, the bank invoked the principle that the stock could not be made payable until the bank should call for payment, and that as the bank could not collect the stock, it could not make the statute of limitations count against it upon the stock subscription until the bank itself had made a call.

The defense was also sustained by Judge Hazen, grounding his decision upon the decisions of the supreme court of the United States, which have held in cases that where calls are provided for in a contract between a corporation and a stockholder, there is no liability of the stockholder to pay until the call is made, and consequently that the statute of limitations cannot run upon the contract of subscription until a call is made by the corporation.

Thus all of the defenses except the mere general denial set up by the stockholders, which was denied by the court, and the contention of the Savings bank was sustained at every point. The defendant prayed an appeal to the supreme court.

The settlement of the question in that court in the case of defendant West, it was held that the statute of limitations applied to the case, and that the case should remain in abeyance.

Judge Hazen remarked in delivering his opinion that the case was the most thoroughly argued case he had ever presented for his consideration.

The arguments were made by David Overmyer, of Overmyer, Mulvaney & Co., for the Savings bank; defendant West was represented by Garver & Larimer and E. A. Austin.

Football at Chicago.

Chicago, Nov. 9.—When the University of Chicago and Northwestern university football teams met on Marshall field today the question with the spectators was the size of the score. Northwestern would pile on the crippled Maroons. With Capt. Sheldon and Halfback Norton on the line, Northwestern eleven, Chicago had little hope of doing better than holding Northwestern's score to modest proportions.

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TONIGHT

Specials For Tonight's Selling.

Our All-Linen 25c Hemstitched Initial Handkerchiefs.....18c

Our Men's Pure Linen 15c Hemstitched Handkerchiefs.....10c

Our Ladies' All Plain 15c Hemstitched Handkerchiefs.....12½c

Our Regular Men's 5c Colored Handkerchiefs.....10c

Tonight—3 for.....10c

Our Splendid Fine Cotton Fleece Topsy Hose—per pair, tonight.....8c

Our 50c Fancy Colored Lisle Thread, Dropstitch Hose—Per pair, tonight.....35c

Tonight—SATURDAY—Tonight

7:30 to 9:30

Saturday, Nov. 9th, 1901.

Crosby Bros

TIGERS VS. NEBRASKA.

Corn Huskers Compelled to Play Three Substitutes.

Omaha, Nov. 9.—Fine weather is promised for this afternoon's game between the Tigers and Nebraska university eleven.

It was announced this afternoon that Nebraska would go into the game with three substitutes. Several of the high grade players were laid out in the Minnesota and Wisconsin games and are unable to take their places today. This will make a hole in the reserve force both in the number and class of the reserve players.

Three trains came in from Lincoln early in the day bringing in a crowd of Nebraska rooters. The line up follows:

Nebraska.....Position.....Missouri Stringer.....left end.....Perry Kingsbury.....left tackle.....Ananias Maloney.....left guard.....Jesse Koehler.....center.....Coe Brew.....right guard.....Gordon Westover.....right tackle.....Washer Cortelyou-Eager.....R. E. Birney-Anderson Drayn.....quarterback.....Kirk Crandall.....left half.....L. M. Anderson Eager-Cuff.....right half.....Forester Pillsbury.....full back.....Nick Hall

Michigan Expects Hard Game.

Columbus, O., Nov. 9.—The Michigan and Ohio state football eleven met on the Ohio state athletic field today for their annual football game. Last fall these same teams played a nothing to nothing game at Ann Arbor, but the two teams did not have any such good fortune today. Coach Yost of Michigan stated before the game that he expected one of the hardest fights of the season.

The Wolverines lined up for the first kick-off all the regulars were in their positions. The game attracted an immense crowd. Everts Wrenn, of Harvard, was the umpire, and Ralph Hoagland, of Princeton, the referee.

Cole Younger Declines a Star.

Minneapolis, Nov. 9.—A. A. Ames, mayor of Minneapolis, tendered Cole Younger, the notorious bandit recently released from the Minnesota state prison on parole after serving twenty-five years of a life sentence, a position as captain on the local police force. Cole took the matter up with his friends in St. Paul, where he is now engaged as clerk in a grocery store. Upon the advice of his friends he decided to refuse the offer.

Plague Stamped Out.

Glasgow, Nov. 9.—The authorities are satisfied that the bubonic plague has been stamped out. The last case of the disease reported was placed in hospital November 1, and the period of incubation expires today.

Wheeled a Barrow For Years.

London, Nov. 9.—Lord William Neville was released from Parkhurst prison on ticket of leave yesterday. He was sentenced to five years' penal servitude February 15, 1898, for fraud in connection with a promissory note. His lordship spent most of the time during his incarceration in wheeling a barrow on the prison farm.

Weekly Bank Statement.

New York, Nov. 9.—The statement of the associated banks for the week ended today shows: Loans \$88,999,000, decrease \$2,507,000; deposits \$950,490,100, decrease \$1,643,000; circulation \$31,821,400, decrease \$34,500; legal tenders \$68,955,600, decrease \$2,579,200; specie \$177,339,300, decrease \$1,124,500; reserves \$246,254,700, decrease \$3,703,700; reserve required \$237,604,776, decrease \$1,801,825; surplus \$8,689,925, decrease \$1,792,575.

REAL ESTATE TRANSFERS.

Lillian A. Sebring to I. F. Sebring, \$10, s. ¼ n. e. ¼ sec. 16-10-13, 30 acres. Juliette Ferguson to W. J. Sturgis, \$1, lot 38 Van Buren street, Firey's add. L. K. Sullivan and business to C. D. Yawley, \$1, pt. s. ¼ ¼ 12-15.

P. A. Anderson vs. Helen D. Nagle, \$800, lot 96-97-98-101-103-105-107-109-111, Green street, Roseville.

T. H. Hiller to J. A. Patterson, \$700, lots 11-12, Van Buren street, Firey's add. Tax deed to Wm. Starks, lot 187 Ada street, Birchall's add.

Blow Open Safe.

St. Louis, Nov. 9.—A Post-Dispatch special from Bedford, Ind., says: Cracksmen gained access to the building of the Campbellburg bank at Campbellburg, Washington county, 29 miles from here on the Monday morning, 1 a. m. and secured between \$12,600 and \$15,000 by blowing open the safe. The robbers escaped, but possums are in hot pursuit.

Hanna Dines With the President.

Washington, Nov. 9.—President Roosevelt had as his guests at dinner last night Senator John C. McMillan of Buffalo. They remained at the White house until after 11 o'clock.

EVERY PATRIOTIC TOPEKAN WILL BE THERE

TO HELP SWELL

THE AUDITORIUM ORGAN FUND

The Boston Ladies' Symphony Orchestra

WILL PLAY A BENEFIT CONCERT AT THE AUDITORIUM,

WEDNESDAY EVENING, NOVEMBER 13th.

Reserved Seat Sale begins at 9 o'clock A. M., Monday, at Stansfield's Drug Store, 632 Kansas Avenue. The Boston Ladies' Symphony Orchestra is well known, and needs no introduction to Topeka people.

AT THE AUDITORIUM, WEDNESDAY AFTERNOON AND EVENING